

## **Terms and conditions of travel (ARB 1992)**

### **Adaptation to the Consumer Protection Act amendment Federal Law Gazette 247/93 and to the Warranty Law Amendment Act, Federal Law Gazette I No. 48/2001**

Jointly advised on the Consumer Advisory Board of the Federal Ministry of Health, Sports and Consumer Protection pursuant to Sec. 73(1) Austrian Industrial Code 1994 and Sec. 8 of the regulation of the Federal Ministry of Commerce as amended 1994 on the performance regulations for travel agents (now Sec. 6 in accordance with Federal Law Gazette II No. 401/98).

The travel agent may act as a broker (Section A) and/or organizer (Section B). The broker commits to seeking to ensure the procurement of services of third parties (organizer, transportation company, hotel owner, etc.).

"Organizer" shall mean the company either seeking to provide multiple tourist services as an all-inclusive package (vacation package/trip) or individual tourist services provided by the organizer itself, generally providing its own leaflets, travel information, etc.

A company acting as tour operator may also act as broker if third party services are arranged (such as an optional excursion in or from the vacation region), as long as it points out this brokerage function.

The following terms and conditions constitute the wording which travel agents usually use to enter into agreements with their customers/travelers as a broker (Section A) or organizer (Section B) (note: within the meaning of the Austrian Consumer Protection Act (KSchG)).

#### The special conditions

- of the tour operators arranged,
- the transport companies arranged (such as railways, overland coach, aircraft and ship) and
- the other service providers arranged shall have priority.

#### A. THE TRAVEL AGENCY AS BROKER

The following terms and conditions shall form the basis of the agreement (contract of agency) into which customers enter with a broker.

##### 1. Booking/conclusion of agreement

Booking may be made in writing or by telephone or in person orally. Telephone bookings or bookings undertaken in person should be confirmed by the travel agent in writing immediately. Travel agents are to use booking forms displaying all the material details of the customer's order and indicating the travel information (catalogue, leaflet, etc.) underlying the booking.

With regard to its own services and the services of the organizer which it has arranged in accordance with Clause 6 of the performance regulations for travel agents, the broker shall draw attention to the present GENERAL TERMS AND CONDITIONS OF TRAVEL, prove that it has drawn attention to any deviating terms and conditions of travel and, in such a case, provide the latter prior to concluding the agreement.

In so far as services of foreign entrepreneurs (service providers, tour operators) are arranged, foreign law may also apply. The party making a booking on his or her own behalf or on behalf of third parties shall, in that respect, be deemed the customer, and shall, in the absence of any other declaration of intent, assume any responsibilities vis-a-vis the travel agent (payments, cancellation of agreement, etc.) resulting from the commissioning.

At the time of booking, the travel agent may request that a handling fee and a (minimum) deposit be paid. The residual payment, as well as the reimbursement of cash expenses (for telephone, fax, etc.)

shall be due at the time of delivering the travel documents (excluding any personal documents) of the respective organizer or service provider at the travel agent's premises.

Travel companies accepting bookings shall be obliged to forward the traveler a travel itinerary (travel confirmation) at the time of or immediately after concluding the agreement.

## 2. Information and other ancillary services

2.1 Information on passport, visa, foreign exchange, customs and public health surveillance regulations. It is considered a known fact that for traveling abroad generally a valid passport is required.

The travel agent must notify the customer about any respective foreign passport, visa and public health surveillance regulations for immigration beyond the above, as well as, upon request, any foreign exchange and customs regulations, in so far as the latter can be obtained in Austria. Moreover, it is the customer's responsibility to adhere to these. Where possible, the travel agent can take on the procurement of any visa required, upon payment of a fee.

Upon request, the travel agent shall provide information (if available) on any special regulations for foreign nationals, individuals without citizenship and persons with dual nationality.

## 2.2 Details on the tourist services

The travel agent is obliged to explain the tour operator's or service provider's services to be arranged, paying attention to the particulars of the contract to be arranged in each case and to the peculiarities of the respective country of destination or place of destination, to the best of its knowledge.

## 3. Legal position and liability

The travel agent's liability extends to

- the careful selection of the respective organizer or service provider, as well as the careful evaluation of prior experience;
- the flawless procurement of services, including any respective briefings of the customer, as well as the issuing of the travel documents;
- the proven forwarding of advertisements, declarations of intent and payments between customers and the company which has been arranged, and *vice versa* (such as amendments to the services and price agreed, letters of cancellation or complaints).

The travel agent shall not be held liable for the provision of the services arranged or procured by it.

The travel company shall notify the customer about the company name (product designation), tour operator's address and any insurance company under a [wordmissing], in so far as these details have not been already set out in the leaflet, catalog or other detailed marketing materials.

Should it fail to do so, it has liability towards the customer as an organizer or service provider.

## 4. Deficiencies in the services provided

Should the travel agent infringe the obligations arising from the contractual agreement incumbent upon it, it is obliged to reimburse the customer for any loss resulting therefrom unless it succeeds in providing evidence that neither intent nor gross negligence can be attributed to it in that case.

In the event of contractual infringements occurring under the agreement based on minor fault, the travel agent shall reimburse the customer for any losses resulting therefrom up to the amount of the commission to be paid under the transaction arranged.

## B. THE TRAVEL AGENT AS ORGANIZER

The following conditions shall form the basis for concluding the agreement – hereinafter referred to as travel agreement - between the party making the booking and an organizer, either directly or by availing of the services of an agent.

In the event of the agreement being concluded directly, the organizer shall assume the agency obligations accordingly. In principle, the organizer recognizes the present GENERAL TERMS AND CONDITIONS OF TRAVEL, and, in accordance with Clause 6 of the performance regulations, any deviations are disclosed in all its detailed advertising brochures.

## 1. Booking/conclusion of the agreement

The travel agreement takes effect between the party making the booking and the organizer once the parties agree upon the significant contractual components (price, services provided and date). As a result, the customer has rights and obligations.

## 2. A change in the person of the passenger

A change in the person of the traveler shall be possible if the substitute fulfills all the conditions of participation, and may be carried out in two ways.

### 2.1 Assignment of the claim to travel services

If the party making the booking assigns either all or individual claims arising from this agreement to a third party, his or her obligations arising from the travel agreement shall be maintained. In this case, the party making the booking shall bear any resulting additional expenses.

### 2.2 Transfer of the trip

Should the customer be prevented from going on the trip, he or she may transfer the contractual relationship to another person. The transfer is to be notified to the organizer, either directly or through an agent, within a reasonable period of time prior to the date of travel. The tour operator may announce a specific deadline in advance. The assignor and the transferee shall be jointly and severally liable for the outstanding remuneration, as well as, if applicable, any additional expenses which have arisen through the transfer.

## 3. Content of the agreement, information and any other ancillary services

Beyond the obligations, also applying to the agent, to provide information (namely information on immigration requirements in relation to the passport, visa, foreign exchange, customs and public health surveillance regulations), the organizer must adequately inform the traveler on the services it offers. The specification of services in the catalog or brochure which is valid as at the date of making the booking, as well as the further information contained therein, shall form the subject of the travel agreement, unless any other agreements are reached at the time of making the booking. It is, however, recommended to establish such agreements unconditionally in writing.

## 4. Journeys with special risks

In the case of journeys with special risks (e.g. having the nature of an expedition), the organizer shall not be liable for the consequences arising in the course of undergoing the risks, if these occur outside the scope of its obligations.

This shall not affect the tour operator's obligation to prepare for the journey carefully and to carefully select the persons and companies to whom the provision of the individual travel services is entrusted.

## 5. Legal basis in the event of deficient services

### 5.1 Warranty

In the case of services which are not provided or are deficient, the customer shall have a warranty claim. The customer declares that he or she agrees that, in place of his or her claim to annulment or a price reduction, the organizer will, within a reasonable period of time, provide faultless services or improve upon the deficient services.

A remedy may be provided by the deficiency being eliminated or by means of the provision of a substitute service of an equivalent or higher value, to which the customer also expressly agrees.

### 5.2 Compensation for damage

Should the organizer or its assistants culpably infringe the obligations incumbent upon the organizer arising from its contractual relationship, it is obliged to compensate the customer for the resulting damage.

In so far as the tour operator must vouch for any persons other than its own employees, it shall - except in cases of injury to persons - only be held liable if it does not prove that the latter have not acted either with intent or gross negligence.

Except in the event of intent and gross negligence, the tour operator shall not be liable for any items which are usually not taken along, unless, in awareness of the circumstances, it has taken these items into safekeeping.

The customer is therefore recommended not to take with him or her any items of special value. Moreover, it is recommended to take proper care of the items brought.

### 5.3 Notification of deficiencies

The customer is required to notify a representative of the organizer of any deficiencies in fulfilling the agreement which he or she establishes during the trip without delay. A prerequisite for this is that he or she has been made aware of such a representative, and the latter can be reached on the spot without any undue difficulty. A failure to notify the representative shall not affect the warranty claims described in Clause 5.1.

It may, however, be imputed to the traveler as contributory negligence and, to that extent, reduce any claim for compensation for damage which he or she may have.

The organizer must, however, point out this co-liability to the customer in writing, either directly or through the agent. The customer must likewise simultaneously have it explained to him or her that failing to notify the deficiency does not affect his or her warranty claims, however it may be imputed as contributory negligence.

If necessary, in the absence of an on-site representative it is recommended to inform either the respective service provider (e.g. the hotel or airline) or the organizer directly of any deficiencies, and request a remedy.

### 5.4 Special liability laws

In the case of plane journeys, the organizer shall be liable, inter alia in accordance with the Warsaw Convention and its supplementary treaties, and, in the case of train and bus journeys, in accordance with the Eisenbahn- und Kraftfahrzeughaftpflichtgesetz (Rail and Road Third Party Liability Act).

### 6. Asserting any claims

In order to facilitate the process of asserting any claims, the customer is recommended to have any lack of provision of services or deficient services confirmed in writing or to secure documentation, proof or witnesses.

Warranty claims by consumers may be asserted within 2 years.

Claims for compensation for damage are statute-barred after 3 years.

In the traveler's interests, it is recommended to raise any claims directly with the organizer or through the travel agent immediately after returning from the journey, since, the greater the delay, the more difficulty there will be in proving the case.

### 7. Cancellation of the agreement

#### 7.1 Cancellation by the customer prior to commencement of the journey

##### a) Cancellation without a cancellation fee

Apart from the valid statutory rights of cancellation, the customer may in the following cases cancel the trip prior to commencement of the services without the organizer having any claims against him or her:

If considerable parts of the agreement, including the cost of the trip, are significantly altered. Each case in which the frustration of the agreed purpose or character of the trip or an increase in the agreed price of the trip in accordance with Clause 8.1. by over 10 per cent occurs constitutes such a contractual amendment.

The organizer is obliged to explain the contractual amendment to the customer without delay, either directly or through the travel agent making the arrangements, and, in that respect, inform the customer of the choice that exists to either accept the contractual amendment or cancel the agreement; the customer is required to exercise his or her option without delay.

In so far as the organizer is responsible for the occurrence of the event entitling the customer to cancel the agreement, the organizer shall be obliged to make compensation for damage to the customer.

##### b) Claim to substitute services

Should the customer not make use of the opportunity to cancel the agreement in accordance with (a), and in the event of the cancellation of the trip without any fault on the part of the customer, the customer may, instead of canceling the agreement, request that it be fulfilled through participation in a different trip of equivalent value, in so far as the organizer is in a position to provide this service.

As well as the claim to an option, the customer also has a claim to compensation for damage due to non-fulfillment of the agreement in so far as the cases cited in Clause 7.2 do not occur.

c) Cancellation subject to a cancellation fee

The cancellation fee shall be a proportional percentage of the price of the trip and the amount of it shall depend upon the date of declaring cancellation of the agreement and the respective type of trip. The total price of the contractually agreed services is to be understood as the price of the trip or the all-inclusive price.

In all cases not specified under (a), the customer is entitled to cancel the agreement in return for paying a cancellation fee.

In the event of an unreasonable cancellation fee, it may be reduced by the court.

*The following cancellation fees per person exist:*

*Up to 30 days prior to commencement of the trip, a general fee of € 30.00*

*From the 29th until the 15th day prior to commencement of the trip, 25%*

*From the 14th until the 7th day prior to commencement of the trip, 50%*

*From the 6th until the 1st day prior to commencement of the trip, 75%*

*On the day of the trip (= "no-show") 90% of the price of the trip.*

Please note the additional cancellation conditions of Innsbruck Information & Reservierung GmbH!

Special conditions will apply to hotel accommodation, holiday apartments, cruises, bus day trips, special trains and journeys on scheduled flights. These are to be given in the detailed program.

Notice of cancellation

When canceling the agreement, the following points are to be noted: The customer (principal) may at any time inform the travel agent with which the journey was booked that he or she is canceling the agreement. In the case of a cancellation, it is recommended that this be carried out

- by means of a recorded delivery letter, or
- in person, with a simultaneous written notice of cancellation.

d) No-show

No-show occurs if the customer does not show up for the departure because he or she is not inclined to undertake the trip or if he or she is not present at departure due to negligence or due to an occurrence which has befallen him or her. Moreover, it is made clear that if the customer no longer can or wishes to claim the remaining services, he or she is required to pay 90 per cent of the price of the trip.

Should the above-mentioned clauses be unreasonable, they may be reduced by a court in the individual case.

Please note the additional cancellation conditions of Innsbruck Information & Reservierung GmbH!

7.2 Cancellation by the organizer prior to commencement of the trip

- a) The organizer shall be exempted from fulfilling the agreement if a minimum number of participants, established in advance in the advertisement, is not reached and the customer has been informed of the cancellation in writing within the following periods stipulated in the description of the trip:
- In the case of trips lasting over 6 days, up to the 20th day prior to commencement of the trip;
  - In the case of trips lasting between 2 and 6 days, up to the 7th day prior to commencement of the trip;
  - In the case of day trips, up to 48 hours prior to commencement of the trip.

Should the organizer be responsible, to an extent beyond slight negligence, for that fact that the minimum number of participants has not been reached, the customer may demand compensation for damage; this is set at the general rate of the amount of the cancellation fee.

The assertion of damage exceeding this amount is not excluded.

b) The cancellation is deemed to be due to force majeure if it is based on unusual or unforeseeable events over which the party claiming force majeure has no influence and the consequences of which could not have been avoided, despite applying the required care. This, however, does not include overbooking, but likely includes state decrees, strikes, war or warlike conditions, epidemics, natural disasters, etc.

c) In the cases a) and b), the customer shall receive back the amount paid. He or she is entitled to exercise the option in accordance with the first paragraph of Clause 7.1.b.

### 7.3 Cancellation by the organizer following commencement of the trip

The organizer is exempt from fulfilling the agreement if, in the course of a group trip, the customer persistently disturbs the progress of the trip through grossly improper conduct, despite being warned. In this case, in so far as the customer is at fault, he or she shall be obliged to pay the organizer compensation for damage.

## 8. Amendment of the agreement

### 8.1 Price changes

The organizer reserves the right to increase the price of the trip confirmed upon booking for reasons that are not dependent upon its volition if the date of the trip is more than two months after conclusion of the agreement. Such reasons may only be a change in transport costs - for example, fuel costs -, duties payable for particular services, such as landing fees, embarkation or disembarkation fees at harbors and corresponding fees at airports, or the exchange rates to be applied in regard to the trip concerned.

Any reduction in price for these reasons must be passed on to the traveler.

Within the two-month period, prices may only be increased if the reasons for it have been individually negotiated at the time of booking and noted on the booking form. The price will not be changed as from the 20th day prior to the date of travel. A price change shall only then be admissible if the agreed prerequisites exist and also exact details of the new price are stipulated. Any price changes and their circumstances are to be explained to the customer without delay.

In the event of any changes in the price of the trip by over 10 per cent, the customer may, in all cases, cancel the agreement without a cancellation fee (see Clause 7.1.a.).

### 8.2 Changes in services following commencement of the trip

- In the case of any changes which are the organizer's fault, the regulations as outlined in Clause 5 (Legal basis in the event of deficient services) shall apply.

- Should it transpire following departure that a considerable proportion of the contractually agreed services is not being provided or cannot be provided, the organizer is required to take appropriate measures without any additional remuneration, so that the trip can be continued. Should it not be possible to take such measures, or should they not be accepted by the customer for good reason, the organizer shall be required, if necessary, without any additional remuneration, to arrange an equivalent opportunity for the customer to be conveyed to the place of departure or to a different place agreed with him or her.

In addition, in the case of non-fulfillment or deficient fulfillment of the agreement, the organizer is obliged to do everything in its power to assist the customer in overcoming any difficulties.

## 9. Provision of information to third parties

Third parties are not given information about the names of the travelers and the places of residence, not even in urgent cases, unless the traveler expressly wished such information to be given. Any costs arising as a result of transmitting urgent news shall be borne by the customer. Travelers are therefore recommended to notify their relatives of the exact holiday address.

## **Supplementary provisions to the ARB 1992 for all trips offered by INNSBRUCK INFORMATION UND RESERVIERUNG GMBH**

### **1. Booking/conclusion of agreement**

The travel agreement takes effect at the date on which your application is confirmed to you by us in writing. The deposit shall be paid no earlier than eleven months prior to the agreed end of the trip and shall amount to 20% of the price of the trip. The remainder is to be paid *at the earliest 30 days* prior to commencement of the trip - concurrently with the travel documents being handed over to the traveler. Any additional payments or deposits paid in advance may not be demanded and are also not secured.

### **2. Warranty/liability**

Notwithstanding our statutory information reporting obligations, our customers are themselves responsible for obtaining all valid passport, visa, customs, foreign exchange, airport and health documentation, and for the completeness of their travel documents. Special provisions apply to foreign nationals and stateless persons.

The customer must report any deficiency that he or she determines during the trip to a representative of the organizer or a service provider (hotel, landlord, etc.) without delay. A prerequisite for this is that he or she has been made aware of such a representative, and the latter can be reached on the spot without any undue difficulty. Failure to notify the representative shall not affect the customer's warranty claims. It may, however, be imputed to the customer as contributory negligence and, to that extent, reduce his or her claims for compensation for damage (see Clause 5.3 Notification of Deficiencies, ARB 1992). Our holiday staff is not entitled to recognize any claims; they may only confirm your complaints.

### **3. Changes to travel arrangements/bookings made**

Should any changes be made by you to the booking with regard to the name (substitute person), date of travel, destination, accommodation or method of transport, a re-booking charge of € 30.00 per booking will be levied – plus any additional expenses incurred - up to 30 days prior to departure. A change of booking from 29 days prior to departure will be treated as a cancellation. The cancellation fees cited will be invoiced. When confirming any special requests, please understand that, due to the additional costs incurred to us, we must charge a cost contribution to the amount of € 30.00 per booking. In the event of changes of booking on location, we charge € 30.00 per booking to cover the additional resulting costs incurred.

### **4. Special, additional conditions of cancellation**

#### **4.1 Scheduled flights or access flights with scheduled aircraft.**

The conditions of cancellation and change of booking made known by the airline shall apply in the event of cancellation. Inquiries about the conditions of cancellation or change of booking must be made at our service center on a case-by-case basis.

### **5. Flight information**

The published times of the flights (always given in local time), as well as dates of the flights are anticipated details. In certain circumstances, flight schedules and times must be changed at short notice. For this reason, we reserve the right to alter the times of the flights and change the airline or aircraft at short notice, or also the airports of departure and arrival and the scheduling of the route. Additional intermediary landings may also occur.

### **6. Cancellation by the organizer prior to commencement of the trip**

The organizer will be exempt from fulfilling the agreement if the minimum number of participants is not reached in the case of special flights (charter flights), IT groups (all- inclusive group travel on scheduled transport) and bus trips,. You will, of course, be informed as early as possible, at the latest, however, up to the 15th day prior to departure in the case of trips lasting over 6 days or up to the 7th day prior to departure in the case of trips with a duration of 2 to 6 days.

### **7. Loss of or damage to baggage**

Any loss of or damage to baggage must be reported at the airport by means of a notice of claim (P.I.R.) of the airline responsible. In the case of bus trips, the loss or damage must be reported to the bus driver without delay upon loading or unloading the baggage.

### **8. Data Protection:**

Your personal details, such as your name, address or e-mail address. These personal details supplied to us by you are stored in our database for the purpose of subsequent processing when you log in. In

addition, data is automatically saved in our log files, which we obtain from your browser during the visit (a browser is, for example, Internet Explorer, Firefox, Safari, etc.). This means that the IP address is known and a cookie is placed on your computer. These cookies guarantee that the order can be processed properly and, above all, it is therefore possible to save your interests, so that, at the next visit, we can offer you those products which are of particular interest to you, without you having to repeat what you are interested in. The details which we have received from you are only passed on to third parties if this is necessary in connection with your booking. To that extent, you authorize us to pass on your personal details to hoteliers, etc. We reserve the right to alter this privacy statement.

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**Place of jurisdiction:** The exclusive place of jurisdiction is Innsbruck.

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